

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Closed Captioning and Video Description of)	
Video Programming)	MM Docket No. 95-176
)	
Implementation of Section 305 of the Telecom-)	
munications Act of 1996)	
)	
Video Programming Accessibility)	

To: The Commission

COMMENTS OF BELL SOUTH

BellSouth Corporation and its subsidiaries BellSouth Interactive Media Services, Inc. and BellSouth Wireless Cable, Inc. (collectively "BellSouth"), by their attorneys, hereby submit these comments in response to the Commission's *Further Notice of Proposed Rulemaking* ("Further Notice"), MM Docket No. 95-176, FCC 98-3 (released January 14, 1998), *summarized*, 63 Fed. Reg. 3070 (January 21, 1998), proposing rules for closed captioning of emergency information.

I. THE COMMISSION'S PUBLIC INTEREST OBJECTIVES ARE BEST SERVED BY REQUIRING EMERGENCY INFORMATION TO BE CAPTIONED AT THE SOURCE.

In its *Further Notice*, the Commission seeks information and comment regarding appropriate rules and "policies to promote and to ensure the accessibility of televised emergency information to persons with hearing disabilities."¹ BellSouth strongly supports Commission rules that maximize the amount of emergency information that will be captioned on an accurate and timely basis for the benefit of hearing-impaired viewers. As the Commission recognizes, "providing all viewers with

¹ *Further Notice* at ¶ 1.

accurate information regarding emergencies is of great importance,” including viewers with hearing disabilities.²

BellSouth believes that the Commission’s objectives will best be achieved by requiring emergency information to be captioned at the source rather than at the facilities of each multichannel video programming distributor (“MVPD”). As recognized by Congress in enacting Section 713(b) of the Communications Act, “[i]t is clearly more efficient and economical to caption programming *at the time of production* and to distribute it with captions than to have each delivery system or local broadcaster caption the program.”³ This is especially true with respect to emergency information, which “is not typically programming that can be pre-recorded and captioned in advance of airing.”⁴ As a result, the captioning of emergency information necessarily entails obtaining “real-time” captioning services, which are more prone to human error and are inherently less accurate than captioning pre-programmed information.⁵ Ensuring accuracy of “real-time” dialogue transcription and precise placement of emergency captions so they appear at the right moment in the proper location can be adequately accomplished only if captioning is done by the entity that is most familiar with program content, *i.e.*, the program source, rather than by an MVPD at the end of the distribution chain which is far removed from events as they unfold. Accordingly, as in the case of prerecorded entertainment programming, an MVPD’s technical role in the captioning of emergency information should be limited to retransmitting intact any captioned information provided at the source.

² *Id.* at ¶ 8.

³ H.R. Rep. No. 104-204, at 114 (1995) (“House Report”) (emphasis added).

⁴ *Further Notice* at ¶ 9.

⁵ *See id.*; *Closed Captioning and Video Description of Video Programming*, MM Docket No. 95-176, *Report*, 11 F.C.C.R. 19214, 19219 (1996) (“*Report to Congress*”).

The vast majority of emergency information on multichannel systems is aired by local broadcast television stations, not satellite-delivered cable networks. It has been BellSouth's observation that most viewers rely almost exclusively on local stations for emergency information. Wired and wireless cable systems simply retransmit that information, without alteration, along with any closed captioning provided by local stations. As a practical matter, it is not necessary to duplicate those efforts by imposing a separate captioning obligation on MVPDs to ensure that hearing-impaired viewers continue to have access to emergency information.⁶

Moreover, the requirements of the Emergency Alert System ("EAS") already obligate BellSouth's wired and wireless cable systems to provide textual information to their subscribers in connection with national emergency situations. The needs of hearing-impaired viewers were specifically taken into account in the Commission's recent EAS rule revisions, which require cable systems to place EAS messages consisting of both audio and video on all programmed channels.⁷ These messages must not interfere with closed captioned information.⁸ The Commission specifically encourages EAS activation on a voluntary basis for both state and local emergencies as well.⁹

⁶ To the extent that satellite-delivered cable networks provide emergency information to subscribers, the Commission should retain its rules allowing an MVPD to rely on certifications from program suppliers expressly stating that their programming is either captioned as required by the Commission or exempt from the Commission's captioning rules. The Commission also should clarify that, as currently provided in its rules for nonemergency programming, an MVPD will not be held responsible where a program source falsely certifies that its programming meets the Commission's captioning requirements, unless the MVPD is aware that the certification is false.

⁷ See *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System*, FO Docket Nos. 91-301/91-171, *Second Report and Order*, FCC 97-338 at ¶¶ 14-15, 22 (released Sept. 29, 1997).

⁸ See *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System*, FO Docket Nos. 91-301/91-171, *Report and Order and Further Notice of Proposed Rulemaking*, 10 F.C.C.R. 1786, 1807 (1994), *modified*, *Second Report and Order*, FCC 97-338 (released Sept. 29, 1997); 47 C.F.R. § 11.51.

⁹ See *id.*, 10 F.C.C.R. at 1807, 1809; 47 C.F.R. § 11.41.

BellSouth intends to pursue voluntary efforts to work with state and local authorities to ensure the availability of emergency information to hearing-impaired viewers via the EAS.

Finally, BellSouth believes that the FCC should be wary of regulating MVPDs in this proceeding. It has not been demonstrated that MVPD-provided closed captioning is more reliable or efficient than closed captioning provided at the program source, or that voluntary efforts have not sufficiently expanded the availability of emergency information to hearing-impaired viewers. Indeed, a cautious regulatory approach is particularly warranted given the thrust of the Telecommunications Act of 1996 to provide for a “de-regulatory national policy framework,”¹⁰ the Commission’s own de-regulatory policies,¹¹ and the greater reliability and accuracy of closed captioning provided at the program source.¹²

II. IN ADOPTING RULES FOR THE CAPTIONING OF EMERGENCY PROGRAMMING, THE COMMISSION SHOULD RETAIN ITS ITFS AND REVENUE-BASED EXEMPTIONS.

The Commission has exempted instructional television fixed service (“ITFS”) from its closed captioning requirements because ITFS is “intended for specific receive sites and not for general distribution to residential television viewers.”¹³ The Commission concluded that “[t]o the extent that persons with hearing disabilities are the intended recipients of this programming, we conclude that other laws require that accommodation be made to make this instructional programming

¹⁰ H.R. Conf. Rep. No. 104-458, at 113 (1996) (“Joint Explanatory Statement”).

¹¹ For example, Chairman Kennard recently stated that the telecommunications industry should be moving away from “government micromanagement” to “common sense pro-consumer deregulation.” Statement of William E. Kennard, Confirmation Hearing before the Commerce, Science and Transportation Comm. (Oct. 1, 1997).

¹² See *supra* notes 3-5 and accompanying text.

¹³ See *Closed Captioning and Video Description of Video Programming, Video Programming Accessibility*, MM Docket No. 95-176, *Report and Order*, FCC 97-279 at ¶ 159 (released Aug. 22, 1997) (“*Closed Captioning Order*”).

accessible.”¹⁴ In addition, the Commission adopted a revenue-based exemption test for smaller video programming providers out of concern that an across-the-board captioning requirement might render certain programming too costly to produce.¹⁵

At the core of the Commission’s ITFS and revenue-based exemptions is the fact that educational and other types of “niche” services have small, targeted audiences and thus should not be subject to the economic burdens of captioning. These exemptions are especially justified in the case of emergency information, since the technical and logistical challenges associated with captioning live or “real-time” emergency material are more complex than those that apply to prerecorded entertainment or informational programming. Moreover, given the public’s heavy reliance on local broadcasters for emergency information, ITFS and other “limited audience” programmers are unlikely to be viewed as sources of emergency information in any case. Accordingly, the Commission should retain its ITFS and revenue-based exemptions when adopting rules for captioning of emergency information.

III. THE FCC SHOULD ALLOW VIDEO PROVIDERS TO “USE ANY METHOD OF VISUAL PRESENTATION WHICH RESULTS IN A LEGIBLE MESSAGE CONVEYING THE ESSENTIAL EMERGENCY INFORMATION.”

Clearly, any rules adopted in this proceeding must ensure that any emergency information originated at a program source and retransmitted by an MVPD is readable by hearing-impaired viewers. Accordingly, the Commission has appropriately asked “whether other methods of visually presenting emergency information would be acceptable in lieu of a closed captioning requirement.”¹⁶ In particular, the Commission notes that Section 73.1250 of the broadcast rules, 47 C.F.R. §

¹⁴ *Id.* at ¶ 159.

¹⁵ *Id.* at ¶¶ 160-68.

¹⁶ *Further Notice* at ¶ 14.

73.1250, allows emergency programming information to be transmitted both aurally and visually or only visually, using “any method of visual presentation which results in a legible message conveying essential emergency information.”¹⁷ The Commission inquires as to whether an extension of this existing broadcast rule to cover emergency information distributed by MVPDs would sufficiently meet the needs of hearing-impaired viewers in connection with its existing closed captioning rules.¹⁸

BellSouth submits that since the above-described rule serves the needs of hearing-impaired viewers and already has been successfully applied to broadcast programming, it would be reasonable to apply it to other types of video programming as well, subject to the exemptions discussed above. In fact, the Commission has already stated in an earlier phase of this proceeding that “[i]n the absence of closed captioning, we expect video programming providers to use [open visual scrawls, open captioning, slides or other methods] to ensure that all of the details of [emergency] information is [sic] fully accessible” to hearing-impaired viewers.¹⁹ By incorporating this statement into the Commission’s rules and extending Section 73.1250 to non-broadcast programming, the Commission will protect the emergency viewing needs of hearing-impaired subscribers.

The Commission should not, however, require that any textual presentation of emergency information incorporate “substantially the entire text of the audio portion of the program.”²⁰ Such a requirement would be overbroad and would create numerous unintentional technical violations even where the substance of the message has been successfully conveyed to the hearing-impaired viewer. Accordingly, in lieu of a word-by-word transcription requirement, the proposed

¹⁷ *Id.* at ¶ 14 (quoting 47 C.F.R. § 73.1250(h)).

¹⁸ *Id.*

¹⁹ *Closed Captioning Order* at ¶ 253.

²⁰ *Further Notice* at ¶ 12.


Commission rule should simply require that the text convey the *substance* of the emergency message at issue. This can be accomplished by adopting the hearing-impaired community's earlier recommendations supporting video captions that are the "functional equivalent" of the audio portion of the programming. Such a standard is both flexible enough to facilitate quick implementation and specific enough to ensure that the accuracy of emergency messages is not compromised.

CONCLUSION

For the foregoing reasons, BellSouth supports the Commission's goal of ensuring the accessibility of accurate emergency information to hearing-impaired viewers. BellSouth believes that this goal is best achieved by requiring captioning at the source rather than by each MVPD. To minimize unnecessary economic burdens on smaller providers, the Commission should retain its ITFS and revenue-based closed captioning exemptions. Finally, the FCC should allow video providers to use any method of visual presentation that produces a legible message conveying essential emergency information to hearing-impaired viewers.

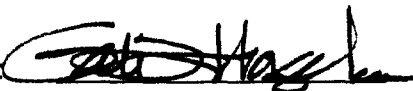
Respectfully submitted,

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February 25, 1998

CERTIFICATE OF SERVICE

I, Brooke Wilding, hereby certify that on this 25th day of February, 1998, copies of the foregoing "Comments of BellSouth" in MM Docket No. 95-176 were served by hand on the following:

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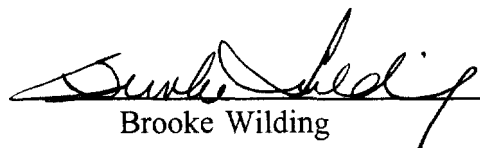
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